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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JAN 26 2010

LIN 07 243 50049

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Mari Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as an assistant research professor. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, the petitioner has not overcome the director's valid concerns.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. from Washington State University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, actinide chemistry and environmental science, and that the proposed benefits of his work, nuclear waste management, environmental protection and closing the nuclear fuel cycle, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique

background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

In addition to submitting his articles and letters from colleagues, which will be addressed below, the petitioner submitted (1) evidence of level three awards issued to him in China in 1990, 1997 and 1998; (2) evidence of travel grants; (3) evidence of his membership in Sigma Xi and the American Chemical Society (ACS); (4) evidence that his colleagues at Washington State University, [redacted] and [redacted] requested that he review manuscripts for potential publication in *Radiochimica Acta, Solvent Extraction and Ion Exchange* and *Talanta* and (5) an invitation to review a manuscript for publication in the *Journal of Alloys and Compounds*.

The record contains no evidence regarding how many level three awards were issued by the China Nuclear Industrial Ministry in 1990, 1997 and 1998 or other evidence regarding the significance of these awards. The travel grant was awarded by the Graduate Studies Committee at Washington State University and appears limited to students. Regardless, recognition from government entities or professional organizations falls under the regulatory criterion for aliens of exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii)(F), a classification that normally requires an approved alien employment certification. We cannot conclude that meeting one criterion, or even the requisite three criteria, for that classification warrants a waiver of that requirement in the national interest. *Id.* at 218, 222.

The record contains no evidence regarding the membership requirements for ACS. On appeal, the petitioner submits evidence that Sigma Xi requires a "noteworthy achievement as an original investigator in a field of pure or applied science or engineering." The petitioner does not submit evidence regarding how Sigma Xi defines "noteworthy achievement." Regardless, even if the petitioner's Sigma Xi membership was indicative of a degree of expertise significantly above that ordinarily encountered in the field, such memberships fall under a second criterion for aliens of exceptional ability set forth at 8 C.F.R. § 204.5(k)(3)(ii)(E). Once again, we cannot conclude that meeting two criteria, or even the requisite three criteria, for that classification warrants a finding that the alien employment certification normally required for that classification should be waived in the national interest. *Id.* at 218, 222.

As stated above, the majority of the requests for the petitioner to review manuscripts for potential publication are from colleagues at Washington State University and cannot establish the petitioner's

reputation beyond the institution where he works. While the petitioner submitted a single peer-review request from someone not clearly affiliated with Washington State University, the peer review process, which requires a peer review of every manuscript submitted for publication to one of the hundreds of thousands of peer reviewed scientific journals in the world, cannot set the petitioner apart from other qualified members of his field without evidence that the journal boasts a small, elite group of peer reviewers. The record in this case does not contain such evidence.

As stated above, the petitioner also submitted reference letters. All but one of the initial letters were from the petitioner's close circle of colleagues. On appeal, the petitioner submits more independent reference letters. We will consider these letters in detail. At the outset, we note that U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of generic "contributions" and positive response in the field are less persuasive than letters that provide specific examples of how the petitioner has influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are the most persuasive.

The petitioner worked as a visiting scientist with the research group headed by [redacted] at the Lawrence Berkeley National Laboratory (LBNL) from 1999 through 2001. The petitioner continued there as an intern while pursuing his Ph.D. at Washington State University. Upon receiving his Ph.D., the petitioner began working as a research associate at Washington State University and was working there as an associate research professor in the laboratory of [redacted] when the petition was filed.

In general, [redacted] asserts that there is a lack of scientists with the petitioner's broad knowledge in multi-disciplinary subjects including actinide, environmental and analytical chemistry. It cannot suffice, however, to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *NYSDOT*, 22 I&N Dec. at 221.

More specifically, [redacted] asserts that the petitioner worked on "a rather difficult but very important research project, studying the chemical behavior of chromium in the high-level nuclear wastes." [redacted]

[redacted] explains that chromium is a problematic element of nuclear waste because it deteriorates the quality of the waste, making disposal expensive. [redacted] states that the petitioner's data "have provided much better understanding of the chemical behavior of chromium under alkaline conditions and helped to develop the strategies to reduce/remove chromium from the waste sludges." While [redacted] notes that this research has been published in prestigious journals, he concludes only that significant reduction of cost and a decrease of hazards in waste management "could be achieved" based on the petitioner's results.

[redacted] asserts that the petitioner investigated and resolved the presence of polynuclear metal oxide/hydroxides under alkaline and environmental conditions of pH, which "have not been extensively investigated in the past in part because their characterization is so extremely challenging that most experienced scientists have avoided attacking the problem." [redacted] further asserts that the petitioner then went on to characterize actinide complexes with gluconic acid, which can interact with polyvalent metal ions in a variety of quite complex modes. As part of this project, according to [redacted], the petitioner "elected to work with transuranic radionuclides that represent one of the greatest radiotoxicity hazards associated with the management of wastes from nuclear power production." [redacted] concludes that the petitioner provided unique insights in this system. [redacted] does not provide examples of how this work is being applied in the nuclear industry.

[redacted], an Emeritus Senior Scientist at LBNL, explains the importance of understanding temperature effects on actinide complexation with organic ligands in predicting the actinide behavior of processing nuclear waste and asserts that the petitioner's research in this area provided valuable information, "greatly aid[ing] in establishing waste treatment strategies." [redacted] does not identify any nuclear waste treatment guidelines, enacted or proposed, that utilize the petitioner's results.

[redacted], an associate professor at the University of Padova in Italy and a former colleague and coauthor of the petitioner at LBNL, provides similar information. Specifically, [redacted] asserts that while at LBNL, the petitioner "generated valuable thermodynamic data for actinide complexation with a simple organic ligand, the acetate ion, at varying temperatures." [redacted] concludes that these data "provide a good reference for predicting actinide behavior in the presence of other carboxylate ligands." Once again, [redacted] does not explain how this work is being utilized in the field.

[redacted] asserts that the petitioner's "diverse background in chemistry and engineering are unique and invaluable to the field of f-element chemistry." She subsequently asserts that the American Association for the Advancement of Science (AAAS) has reported to Congress that there is a need in the United States for more trained personnel in the nuclear energy production sector. As stated above, however, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

[redacted] further asserts that the petitioner is a "leader in the field of actinide chemistry" based on his ability to resolve x-ray absorption spectra to directly determine bonding information between f-elements and organic complexants. She states that the petitioner "has coupled x-ray absorption spectroscopy and mass spectrometry with other more common types of spectroscopy such as nuclear magnetic resonance to unequivocally identify multiple species in solution that have confounded our understand[ing] of actinide solution chemistry for decades." [redacted] concludes that this work "is not only directly related to providing a scientific basis for radioactive waste disposal, but also to providing a fundamental science basis for closing the U.S. nuclear fuel cycle through the Global Nuclear Energy Partnership and any other advanced nuclear fuel cycles that the U.S. might pursue in the future." While we do not contest that the petitioner is pursuing a valuable line of research, all research, to receive funding and be accepted for publication, must offer useful and beneficial information adding to the general pool of knowledge. [redacted] does not explain how the petitioner's research with f-elements has already impacted the field.

[redacted] then discusses the petitioner's current research on the coordination chemistry of f-elements with nitrogen-donor chelates such as DTPA. On appeal, [redacted] affirms that the petitioner played a leading role on his Ph.D. and postdoctoral research. While [redacted] discusses the importance of this area of research and asserted in her first letter that the petitioner's approaches are "pioneering," she does not explain how this work is already impacting the field. On appeal, [redacted] an assistant professor at Clemson University, asserts that his own research has been influenced by the petitioner's Ph.D. research. We note that [redacted] completed his postdoctoral research at LBNL while the petitioner was an intern there. The record contains no evidence that [redacted] had cited the petitioner's work as of the date of filing.

[redacted] asserts that the petitioner's research at Washington State University combined structural techniques, providing a useful tool to resolve the details of the coordination modes, and gives reliable resources to predict the complexation properties." [redacted] does not identify any independent laboratory using the petitioner's combination of techniques.

[redacted], a senior research scientist at the Pacific Northwest national Laboratory (PNNL), primarily discusses the importance of the petitioner's area of research and the need for trained personnel in this area. As stated above, however, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218. In addition, the issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Id.* at 221. [redacted] concludes that the petitioner's results at LBNL "provide a better understanding of the behavior of some essential actinides and other problematic elements in the waste storage and the further treatment processes." [redacted] does not provide examples of treatment guidelines, enacted or proposed, that derive from the petitioner's work. [redacted] curriculum vitae lists [redacted] as one of his postdoctoral associates from 1996 through 1998.

On appeal, the petitioner submits additional letters purporting to demonstrate his influence on independent researchers. [redacted] of the Chemical and materials Sciences Division at PNNL, asserts that the petitioner's work was influential at PNNL, particularly their modeling work with respect to other Cr(III) related environmental systems. The record contains an article coauthored by [redacted] that does cite the petitioner's work. The citing article, however, is coauthored by [redacted]. This self-citation by [redacted] does not demonstrate the petitioner's influence beyond his immediate circle of collaborators.

[redacted] a professor at Southwest University in China, asserts that his group "has heavily relied" on the petitioner's research. Specifically, [redacted] explains that his group used the chromium III (Cr(III)) oligomer preparation procedure to successfully obtain concentrated oligomer-DNA binding molecules with high efficiency. According to [redacted], his group also used the petitioner's structural studies for CR(III) oligomers as a basis for a design of the tertiary complex (oligomer-DNA-TOPO) in the interfacial region of H_20/CCl_4 system by using a synergistic ligand, TOPO, to replace Cr(III) hydrated water molecules. The record includes an article coauthored by [redacted] that does cite a 2002 article coauthored by the petitioner and five other authors at various institutions. The citing article states that their preparation of CrHO was similar to the petitioner's report. While not determinative, we note that the petitioner performed the cited work under the supervision of [redacted] prior to entering the Ph.D. program at Washington State University and his name is the fourth author among the six authors. Regardless, we do not question that the petitioner's work has applications in his field. As stated above, it can be presumed that research, in order to qualify for funding and publication, must provide original and useful results. We are not persuaded that this single letter from an independent research team using the petitioner's research is evidence of his influence on the field as a whole.

As stated above, the petitioner also submitted his published articles and evidence of his presentations. In response to the director's request for additional evidence, the petitioner submitted a self-serving list of citations. The director concluded that this evidence was not supported in the record, but did confirm a limited number of citations on the Internet. The director then concluded that the petitioner's citation record was not indicative of an influence on the field as a whole. On appeal, the petitioner submits evidence of citations. This evidence reflects that the petitioner's articles have not been widely cited individually. Specifically, none of the petitioner's articles had been individually cited more than seven times and most of the articles had been cited much less than seven times. We concur with the director that this level of citation is not indicative of the petitioner's influence on the field as a whole. While we recognize that citations are not the only evidence that can demonstrate an alien's impact in the field, for the reasons discussed above, the remaining evidence is not persuasive.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who obtains a Ph.D. or is working with a government grant inherently serves the national

interest to an extent that justifies a waiver of the job offer requirement. The record does not establish that the petitioner's work has been influential in the field as a whole.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.